

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 14, 2000

IN RE:

**GENERIC DOCKET TO ESTABLISH UNE PRICES
FOR LINE SHARING PER FCC 99-355, AND RISER
CABLE AND TERMINATING WIRE AS ORDERED
IN TRA DOCKET 98-00123**

**DOCKET NO.
00-00544**

**ORDER OF PRE-HEARING OFFICER GRANTING PETITION
TO INTERVENE, DENYING MOTION TO FILE SURREBUTTAL
TESTIMONY AND POSTPONE HEARING, AND GRANTING
MOTION TO ALLOW BRIEF DEMONSTRATION**

These matters came before the Pre-Hearing Officer at a properly noticed Pre-Hearing Conference on November 21, 2000. The purpose of the Pre-Hearing Conference was to dispose of any outstanding motions and establish the order of the presentation of testimony prior to the start of the Hearing on Monday, November 27, 2000.

Outstanding Motions

On November 9, 2000, Mpower Communications Corporation ("Mpower") filed a *Petition to Intervene*. Mpower explained that it would participate as a member of the Data Coalition.¹

On November 16, 2000, BellSouth Telecommunications, Inc. ("BellSouth") filed a *Motion for Leave to File Surrebuttal Testimony and to Postpone Hearing*. In support of its

¹ The Data Coalition includes DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), BlueStar Networks, Inc. ("BlueStar"), Broadslate Networks of Tennessee, Inc. ("Broadslate"), and Vectris Telecom, Inc. ("Vectris").

motion, BellSouth claimed that it had been prejudiced by the failure of the Intervenor² to file direct testimony to which BellSouth could file rebuttal testimony. BellSouth also contended that a delay in the hearing would not prejudice the parties because the Authority has adopted interim rates.

The Data Coalition filed its *Opposition to BellSouth's Motion to File Surrebutal and to Postpone Hearing* on November 17, 2000. The Data Coalition argued that the motion to file surrebuttal testimony should be denied because BellSouth bears the burden in this case; the procedural schedule did not require the filing of direct testimony, nor did it provide for pre-filed surrebuttal testimony; and BellSouth may cross-examine witnesses at the hearing. Finally, the Data Coalition stated that it wanted to move forward with the hearing as scheduled.

On November 20, 2000, the Data Coalition filed a *Motion to Allow Brief Demonstration*. The Data Coalition asserted that the demonstration would take less than fifteen (15) minutes to perform and would demonstrate the tasks associated with load coil removal. The Data Coalition also argued that BellSouth would not be prejudiced because the same demonstration was performed during a similar proceeding in Florida at which BellSouth was present.

Pre-Hearing Conference

The parties in attendance at the November 21, 2000 Pre-Hearing Conference were:

AT&T Communications of the South Central States, Inc. ("AT&T") – **James P. Lamoureux**, Esquire, 1200 Peachtree Street, N.E., Room 4060, Atlanta, GA 30309;

² For the purposes of this Order, the term "Intervenor" shall include AT&T Communications of the South Central States, Inc.; XO Communications, Tennessee; MCI Telecommunications d/b/a MCI WorldCom; and the Data Coalition.

XO Communications, Tennessee (“XO”) – **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062;

MCI Telecommunications d/b/a MCI WorldCom (“MCI”) – **Susan J. Berlin**, Esquire, 6 Concourse Parkway, Atlanta, GA 30328, who participated telephonically;

Broadslate Networks of Tennessee, Inc. and Network Telephone Corporation – **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062 and **Joshua M. Bobeck**, Esquire, Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007-5116, who participated telephonically;

BlueStar Networks, Inc. – **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062;

DIECA Communications, Inc. d/b/a Covad Communications Company. – **Catherine F. Boone**, Esquire, 10 Glenlake Parkway, Suite 650, Atlanta, Georgia 30328 and **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062;

Mpower Communications Corporation – **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062;

BellSouth Telecommunications, Inc. (“BellSouth”) – **Guy M. Hicks**, Esquire, 333 Commerce Street, 22nd Floor, Nashville, TN 37201-3300 and **Michael Toomey**, Esquire, 675 W. Peachtree Street, Suite 4300, Atlanta, GA 30375, who participated telephonically;

Telephone Data System Companies – **Dale Grimes**, Esquire, Bass, Berry & Sims PLC, 2700 First American Center, Nashville, TN 37238; and

United Telephone Southeast, Inc. and Sprint Communications Company, L.P. (“United”) – **James B. Wright**, Esquire, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900.

Findings and Conclusions

Based on the filings and the arguments of the parties made at the Pre-Hearing Conference, the Pre-Hearing Officer made the following findings and conclusions.

1. Counsel for the Data Coalition clarified that Mpower will only participate in this proceeding as a part of the Data Coalition. There were no objections to the motion to intervene as clarified. Given such clarification, Mpower's *Petition to Intervene* is granted without objection.

2. The procedural schedule set forth in the August 10, 2000 Order did not require the filing of direct testimony or provide for the filing of surrebuttal testimony by any party.


3. At the Pre-Hearing Conference, BellSouth agreed to present its surrebuttal testimony on the stand during the hearing. No prejudice will result to any party if BellSouth is permitted to present live surrebuttal testimony. Given this finding, there is no need to postpone the hearing. BellSouth may elicit its surrebuttal testimony either with its direct testimony or proceeding the presentation of rebuttal witnesses by the Intervenors.

4. The order of witnesses as agreed to by the parties is as follows: Michael Zulevic, Doanne Caldwell, Keith Milner, Ronald Pate, John Ruscilli, Daniel Gordan, Dean R. Fasset, Michael Starkey, Greg Darnell. Witnesses Caldwell and Milner will present direct and surrebuttal testimony simultaneously. To date, BellSouth has not decided whether witnesses Pate and Ruscilli will provide surrebuttal testimony. Upon completion of the Intervenors' rebuttal testimony, United will present witness Gordon and BellSouth will present Wiley Latham and William Greer as surrebuttal witnesses.

5. There was no objection to the Data Coalition's motion to perform a demonstration of load coil removal. Therefore, the motion is granted.

IT IS THEREFORE ORDERED THAT:

1. The *Petition to Intervene* filed by Mpower Communications Corporation is granted.
2. The *Motion for Leave to File Surrebuttal Testimony and to Postpone Hearing* filed by BellSouth Telecommunications, Inc. is denied; however, BellSouth may proffer witnesses during the hearing to rebut the Intervenor's rebuttal testimony.
3. Testimony shall be presented as set forth in this order.
4. The *Motion to Allow Brief Demonstration* filed by the Data Coalition is granted.


Director H. Lynn Greer, Jr.
Pre-Hearing Officer

ATTEST:


K. David Waddell, Executive Secretary